



County of Los Angeles CHIEF EXECUTIVE OFFICE

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<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

October 16, 2007

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**DEPARTMENT OF PUBLIC WORKS: BURBANK EASTERN SYSTEM
SUNSET CHANNEL - PARCELS 128 AND 312
USE AGREEMENT - CITY OF GLENDALE
(SUPERVISORIAL DISTRICT 5)
(3 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY
OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:**

1. Consider the Mitigated Negative Declaration prepared and adopted by the City of Glendale as lead agency, find on the basis of the whole record before your Board that there is no substantial evidence the project will have a significant effect on the environment, find that the Mitigated Negative Declaration reflects the independent judgment and analysis of your Board, and adopt the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the project.
2. Find that the proposed 25-year Use Agreement between the Los Angeles County Flood Control District and the City of Glendale will not interfere with the use of the Burbank Eastern System-Sunset Channel for any purposes of the Los Angeles County Flood Control District.
3. Instruct the Chairman to sign the Use Agreement and authorize delivery to the City of Glendale.

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to allow the Los Angeles County Flood Control District (LACFCD) to enter into an agreement with the City of Glendale (City) for the use of a portion of Burbank Eastern System-Sunset Channel, Parcels 128 and 312, to install and maintain fencing, landscaping, an irrigation system, and seating in the form of benches or seat walls as components of a rest area for bicyclists and pedestrians. This action will allow for the dual use of flood control right of way without interfering with flood control use.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs that we provide Community Services (Goal 6). The improvements will improve the aesthetics of the area and enhance the recreational opportunities for area residents; thereby, improving the quality of life for the residents of the County.

FISCAL IMPACT

There will be no impact to the County General Fund.

There will be no monetary consideration paid for the Use Agreement since the use of the LACFCD properties is for recreational purposes. The Los Angeles County Flood Control Act provides for LACFCD property to be used for these purposes as long as the public recreational purposes are compatible with the LACFCD purposes of flood control, water quality, and water conservation.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Parcels 128 and 312 are located along Burbank Eastern System-Sunset Channel, southerly of Victory Boulevard and Flower Street, in the City of Glendale.

The Use Agreement is for 25 years. The Use Agreement is for recreational purposes in connection with the City project known as Glendale Narrows Riverwalk project.

Section 2, paragraph 5, of the Flood Control Act provides that the "improvement of existing facilities may involve...aesthetic treatment in order that the facility will be compatible with existing or planned development in the area of the improvement."

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Section 2, paragraph 14, of the Flood Control Act authorizes the LACFCD "to provide, by agreement with other public agencies, for the recreational use of the lands, facilities, and works of the LACFCD which shall not interfere or be inconsistent with the primary use and purposes of such lands, facilities, and works by such district."

The Use Agreement has been reviewed and approved by County Counsel as to form.

ENVIRONMENTAL DOCUMENTATION

The Department of Public Works (Public Works) is acting as a responsible agency for the proposed project. The City, as lead agency, prepared an initial study, consulted with Public Works, and adopted a Mitigated Negative Declaration for this project on October 10, 2006. The recommended action will not have a significant effect on the environment.

Upon your Board's approval of the project, Public Works will file a Notice of Determination with the Registrar-Recorder/County Clerk in accordance with Section 21152(a) of the California Public Resources Code.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

This action allows for the recreational use of the LACFCD right of way by the public without interfering with the primary mission of the LACFCD.

CONCLUSION

Please return one adopted copy of this letter and two executed Use Agreements to the Department of Public Works, Mapping & Property Management Division.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:DLW
PAP:mr

Attachments (3)

c: County Counsel
Auditor-Controller (Accounting Division-Asset Management)

AGREEMENT NO. _____
BURBANK EASTERN SYSTEM-
SUNSET CHANNEL
PARCELS 128 AND 312
THOMAS GUIDE NO. 564-B3
R/W MAP NO. 149-RW 1.1
A.I.N. 5627-020-907
FIFTH DISTRICT

USE AGREEMENT

This Use Agreement, entered into on _____, 2007, (Commencement Date), by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT (hereinafter referred to as DISTRICT), and the CITY OF GLENDALE, a municipal corporation (hereinafter referred to as USER).

W I T N E S S E T H

WHEREAS, the DISTRICT owns the fee title for that portion of the Burbank Eastern System-Sunset Channel located southerly of Victory Boulevard at Flower Street, in the City of Glendale, State of California, as more particularly shown on Exhibit A, attached hereto, and made a part hereof, hereunder referred to as PREMISES; and

WHEREAS, the USER proposes to use a portion of PREMISES for recreational purposes, in connection with the USER's project known as Glendale Narrows Riverwalk Project; and

WHEREAS, the USER proposes to install and maintain certain improvements on PREMISES in connection with the Glendale Narrows Riverwalk Project, specifically including: fencing, landscaping, an irrigation system, and seating in the form of benches or seat walls as components of a rest area for bicyclists and pedestrians, hereinafter referred to as IMPROVEMENTS; and

WHEREAS, the DISTRICT and the USER propose to enter into this Use Agreement to establish the construction, operation, maintenance, and financial obligations of each party.

NOW, THEREFORE, in consideration of the promises and faithful performance by USER and DISTRICT of mutual covenants herein contained, for the period of time herein set forth, the DISTRICT and USER hereto mutually agree as follows:

SECTION I

USER AGREES:

1. To bear all costs to prepare plans and specifications, construct the IMPROVEMENTS and all other costs of any nature whatsoever which are necessary for the USER's use of the PREMISES.
2. To obtain approval of the plans and specifications for construction of the IMPROVEMENTS, in the form of a no-fee permit from Construction Division, Subdivision and Permits Unit, of the County of Los Angeles Department of Public Works, prior to commencing any construction on PREMISES. USER shall also obtain DISTRICT's prior written approval as set forth herein, should USER propose to make any changes to the approved plans and specifications.
3. To provide DISTRICT with approved As-Built plans upon completion of the IMPROVEMENTS.
4. To keep, inspect and maintain the PREMISES and the IMPROVEMENTS in a safe, clean, and orderly condition at all times during the term of this Use Agreement and not permit trash and debris, including but not limited to, rubbish, tin cans, bottles, and garbage, to accumulate at any time, nor to commit, suffer, or permit any waste on the PREMISES or IMPROVEMENTS or permit any acts to be done in violation of any laws or ordinances thereon.
5. To remove graffiti from the PREMISES and IMPROVEMENTS and any other walk, fences, and signs which are located within the PREMISES.
6. To replace or repair any property of DISTRICT that becomes damaged by USER or any person entering the PREMISES at USER's invitation or with the consent of the USER, either expressed or implied, within a reasonable time, to the satisfaction of the DISTRICT or to compensate the DISTRICT for the damage within thirty (30) days of billing.
7. All Improvements installed by USER will be subject to removal by USER at DISTRICT's request, and the cost for removal and restoration of PREMISES shall be borne by USER. At the expiration or sooner termination of this Use Agreement, USER shall, at its own expense, restore the PREMISES to the satisfaction of DISTRICT, to a condition similar to that which existed on the Commencement Date, reasonable wear and tear excepted. If USER fails to remove the IMPROVEMENTS and restore the PREMISES within ninety (90) days after receipt of notice by DISTRICT, DISTRICT may remove the IMPROVEMENTS itself and the USER agrees to reimburse DISTRICT for any and all expenses incurred within thirty (30) days of billing.

8. Without limiting USER's indemnification of the DISTRICT, USER shall procure and maintain in full force and effect during the term of this Use Agreement, insurance policies providing for the following insurance coverage:
- Comprehensive general liability and property damage coverage with a combined single limit liability in the amount of not less than TWO MILLION DOLLARS (\$2,000,000), per occurrence.
 - Worker's Compensation coverage in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the DISTRICT and USER against any loss, claim or damage arising from any injuries or occupation diseases occurring to any worker employed by or any person retained by USER in the course of carrying out the work or services contemplated in this Agreement.
 - The DISTRICT, its governing Board, officers, agents, contractors, and employees shall be named as Additional Insureds on all policies of liability insurance. USER shall furnish to DISTRICT a Policy of Insurance evidencing USER's insurance coverage no later than (10) working days after execution of the Agreement, but before USER takes possession of the PREMISES. Upon renewal of said policy USER shall furnish to DISTRICT a Certificate evidencing USER's continued insurance coverage as required herein.
 - The DISTRICT may accept, should USER elect to provide, a Certificate of Self-Insurance. The limits of such self-insurance coverage shall meet or exceed those stated herein.

SECTION II

DISTRICT AGREES:

1. To review plans and specifications for the IMPROVEMENTS and notify USER of its approval.
2. That USER is authorized and permitted to use PREMISES for the construction, operation, maintenance, and use of IMPROVEMENTS, in accordance with the terms and conditions of this Use Agreement.
3. To inspect the PREMISES for compliance with approved plans and specifications.

SECTION III

IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

1. USER and DISTRICT shall have no financial obligation to each other under this Use Agreement, except as herein expressly provided.
2. USER's use of the PREMISES shall be subordinate to the primary uses and purposes of the PREMISES by DISTRICT for watershed management, including flood control, water conservation, water quality, utility and transportation purposes and USER's use of the PREMISES shall at no time interfere with DISTRICT's use of PREMISES for such purposes. The DISTRICT reserves the right to cancel this Use Agreement, should, in its opinion, there develop a substantial incompatibility between the USER's permitted use herein and DISTRICT's uses for flood control and water conservation, watershed, utility, or transportation purposes, arising from any cause whatsoever. Said use shall be terminated ninety (90) days after notification in writing by the DISTRICT's Chief Engineer. USER also agrees to perform any required modifications or to relocate or remove any of its IMPROVEMENTS within the PREMISES upon written receipt of notice from DISTRICT if in the sole opinion of the DISTRICT, it is determined that USER's IMPROVEMENTS interfere with the DISTRICT's primary function of flood control, water conservation, and watershed management purposes.
3. The parties expressly recognize and intend that in consideration of this Use Agreement which is solely for USER's benefit, that DISTRICT is not to incur any liability whatsoever, for any injury, death, or property damage arising from any use of the PREMISES or IMPROVEMENTS by persons who gain entry through openings or areas provided for USER's use unless such injury, death, or damage is caused by DISTRICT's negligence, or willful or gross negligence.
4. In accordance with Government Code Section 895.4, DISTRICT and USER agree to apportion responsibility and indemnification notwithstanding any other provision of law as follows:
 - a. USER agrees to indemnify, defend, and hold harmless DISTRICT, its governing Board, officers, employees, engineers, contractors, or agents against any claims by third parties of any nature whatsoever, arising from or in connection with the construction, reconstruction, maintenance, operation, or removal of any IMPROVEMENTS constructed or maintained by USER on, above, or under the PREMISES or arising from or in connection with any and all uses of the PREMISES by USER.

- b. DISTRICT agrees to indemnify, defend, and hold harmless USER, its officers, agents and employees against any claims by third parties of any nature whatsoever, arising from or in connection with the construction, reconstruction, maintenance, operation, or removal of any improvements constructed or maintained by DISTRICT on, above, or under the PREMISES or arising from any and all uses of the PREMISES by DISTRICT.
 - c. USER releases DISTRICT and waives all right to damages for any loss, costs, or expenses USER may sustain as a result of damage to or destruction of IMPROVEMENTS or to the PREMISES attributable to DISTRICT's flood control, water conservation function, watershed management practices, or flooding caused by inadequacy or failure of DISTRICT's facilities.
 - d. Each party agrees to include the other within the protection of any indemnification clause contained in any ancillary contract relating to the PREMISES.
- 5. DISTRICT, its Board, any authorized officer, engineer, employee, contractor, through its agents or representatives, shall have full right and authority to enter in and upon PREMISES at any and all reasonable times during the term of this Use Agreement all without interference or hindrance by USER, its agents, officers, contractors, employees, or representatives for the purpose of inspecting the same and to serve or post any notice required or permitted by law for protection of any right or interest of DISTRICT.
- 6. Except as to fuels, lubricants and products associated with motorized vehicles, equipment, gardening or maintenance-related substances, or all of the above, USER shall not cause or allow the presence, use, storage, or disposal of any hazardous substances on or about the PREMISES without the prior written consent of the DISTRICT which consent shall not be unreasonably denied. In the event of spillage, leakage or escape or any hazardous substance onto the PREMISES, USER shall immediately notify DISTRICT by calling (800) 675-4357. If the spillage, leakage or escape was caused by USER, USER shall promptly remove any such substance from the PREMISES to the DISTRICT's satisfaction. In addition to removing any of USER's hazardous substances, USER shall be liable for and reimburse DISTRICT for any and all cost and expenses that DISTRICT may incur or suffer as a result thereof. Such responsibility shall include cost or expenses as DISTRICT may incur by reason of Federal, State, local or other authoritative agency's laws and regulations. Notwithstanding the foregoing, USER shall have no responsibility regarding any spill, leak or escape associated with any of DISTRICT's tenants, licensees or easement holders.

7. USER shall be the lead agency and will provide the necessary environmental clearances and any other permits as required by law in connection with the IMPROVEMENTS.
8. Use of the PREMISES is limited to the construction, operation, maintenance and use of IMPROVEMENTS, in accordance with the terms and conditions of this Use Agreement.
9. The term of this Use Agreement shall be for twenty-five (25) years (Initial Term), subject to the DISTRICT's right to terminate as provided for in Section III, subsection 2 above.
10. USER shall have the right to renew this Use Agreement beyond the Initial Term on a year-to-year basis for a period not to exceed (25) years, provided a written request from the USER is received by the DISTRICT no earlier than twelve (12) months or later than six (6) months prior to the end of the Initial Term and upon written approval of DISTRICT. The DISTRICT shall have the right to cancel this Use Agreement for any reason, after the Initial Term, upon and any subsequent permit(s) affecting the PREMISES issued by the (30) days' written notice to USER.
11. Any amendment to this Use Agreement shall be executed by the DISTRICT's Board of Supervisors.
12. Any notice to be given or document to be delivered by DISTRICT or USER to the other party may be delivered in person to either party or by private courier or may be deposited in the United States mail, duly registered or certified, with postage prepaid and addressed to the party for whom intended as follows:

To DISTRICT:

Los Angeles County Flood Control District
Attention: Mapping & Property Management Division
P.O. Box 1460
900 South Fremont Avenue
Alhambra, CA 91802-1460

Telephone: (626) 458-7065 or (626) 458-7072; fax (626) 289-3618
For Emergencies, contact (626) 458-HELP (4357)

To USER:

City of Glendale
Parks, Recreation, & Community Services Department
Attention: John Pearson
613 East Broadway
Glendale, CA 91206
(818) 548-3735 or (818) 548-2000

IN WITNESS WHEREOF, the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, by order of its Board of Supervisors, has caused this Use Agreement to be subscribed by the Chairman of the Board of and the seal of the DISTRICT to be affixed hereto and attested by its Executive Officer of the Board of Supervisors, and the USER has hereunto subscribed their names, the date and year first above written.


USER:
CITY OF GLENDALE,
a municipal corporation

By


City Manager

08-02-07
Date

Approved as to Form:


City Attorney 7-26-07

DISTRICT:

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
a body corporate and politic

By _____

ATTEST:

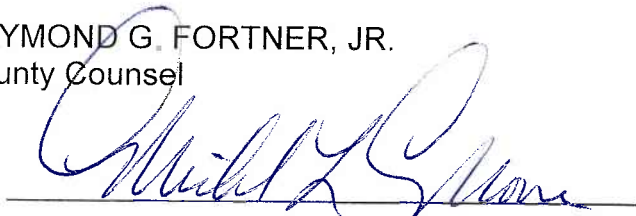
SACHI A. HAMAI, Executive Officer
of the Board of Supervisors of the County of Los Angeles

By: _____
Deputy

Approved as to Form:

RAYMOND G. FORTNER, JR.
County Counsel

By:



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles
On August 2, 2007 before me, Rita Buchanan, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared James E. Starbird
Name(s) of Signer(s)

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Rita Buchanan
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On January 6, 1987, the Board of Supervisors for the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies, and authorities for which said Board so acts adopted a resolution pursuant to Section 25103 of the Government Code that authorized the use of facsimile signatures of the Chair of the Board on all papers, documents, or instruments requiring the Chair's signature.

The undersigned hereby certifies that on this _____ day of _____, 20____, the facsimile signature of _____, Chair of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, was affixed hereto as the official execution of this document. The undersigned further certifies that on this date a copy of the document was delivered to the Chair of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

In witness whereof, I have also hereunto set my hand and affixed my official seal the day and year above written.

SACHI A. HAMAI, Executive Officer
of the Board of Supervisors
of the County of Los Angeles

By _____
Deputy

(LACFCD-SEAL)

APPROVED AS TO FORM

RAYMOND G. FORTNER, JR.
County Counsel

By  _____
Deputy

CW:mr
P6\brnkgIndagmt

